IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3945 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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TRIVEDI KANTILAL H & 20 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
NOTICE SERVED for Applicant(s) : 1 - 4, 6,8 - 11,14 - 19, 21,MR UA TRIVEDI for Applicant(s) : 5, 7,12 - 13, 20,
MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/06/2007

ORAL JUDGMENT :

1. The petitioners, 21 accused persons in Criminal Case No.436 of 1997 pending in the court

of learned Judicial Magistrate, First Class Dhanera, have approached this court under the provisions of section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") with the prayer to set aside the complaint in the aforesaid criminal case and the order made below it to issue process for the offences punishable under sections 270, 273, 277 read with section 34 of the Indian Penal Code, 1860. None present for respondent No.2, the original complainant, though served.

2. According to the petition, the petitioners are president, chief officer and elected members of Dhanera Municipality against whom the aforesaid complaint was filed on 20.6.1997 by respondent No.2, the complainant, who was earlier president of that municipality and who had contested election for being a councillor and lost. It is alleged that the original complainant is, since he lost in the election, trying to cause harassment to elected members of the municipality and had filed the complaint without any *bona fide* intention or factual basis. It was submitted by learned counsel Mr.U.A.Trivedi, appearing for the petitioners, that petitioner No.12 herein had already challenged the impugned order by filing a

criminal revision application in the court of learned Sessions Judge, Palanpur and, by virtue of the order therein, further proceedings of the criminal case were already stayed. He, therefore, conceded that the present petition was liable to be dismissed as far as petitioner No.12 was concerned. However, arguing for rest of the petitioners, he submitted that the allegations made in the complaint were *ex facie* absurd, unbelievable and, in any case, related to the duties and functions of the petitioners as councillors or office-bearers of the municipality. He submitted that, under the provisions of section 254 of the Gujarat Municipalities Act, 1963, previous sanction for prosecution was required and not obtained by the complainant and hence, the impugned order taking cognizance of the alleged offences was liable to be quashed only on that ground. Mr.Trivedi submitted that, in case of petitioner No.2, he being the chief officer, provisions of section 197 of the Code would be attracted and sanction under that provision would be required before the court could take cognizance of the alleged offence. Mr.Trivedi relied upon the recent judgment of the Supreme Court in ***Sankaran Moitra v. Sadhna Das and Another [(2006) 4 SCC 584]***.

3. Learned A.P.P., appearing for respondent No.1 State, conceded that allegations of not properly performing their duties against the petitioners were in fact vague and related to the alleged acts of commission or omission of the petitioners. Therefore, in short, he conceded that the provisions of section 254 of the Gujarat Municipalities Act, 1963 and of section 197 of the Code were attracted in the facts of the case.

4. Provisions of section 254 of the Gujarat Municipalities Act, 1963 read as under:

> "**S.254 Previous sanction for prosecution against President or Vice President or Councillor:**
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> *When any person who is or had been a President or Vice President or Councillor of a municipality is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the State Government or any officer authorised by the State Government in this behalf."*

5. In absence of any controversy about the petitioners being President/Chief Officer/ Councillors of the municipality and about the

fact that the allegations made in the original complaint were acts alleged to have been committed while acting or purporting to act in the discharge of their official duty, the court could not have legally taken cognizance of the alleged offence without previous sanction of the State Government or any officer authorised by it in that behalf. Therefore, the petition is required to be allowed in respect of all the petitioners so as to quash the impugned complaint and the order made below it with liberty to the original complainant to apply for sanction and submit the complaint afresh, if sanction were granted by the appropriate authority. As far as petitioner No.12 is concerned, it was stated at the bar by learned counsel Mr.Trivedi that the revision application filed by her and stated to be pending in the court of learned Sessions Judge, Palanpur, shall be withdrawn, if it is not already withdrawn or disposed by now. Accordingly, petition is allowed in terms of para 8 (B) and Rule is made absolute with no order as to cost.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)